

(Revised November 2004)

VOLUNTARY PRODUCTION LETTER

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Dear Mr./Ms. Lawyer:

You have requested a statement regarding the United States Department of Justice's ("Department") treatment of sensitive information which it may receive from your client in response to our request for the voluntary production of information, including information provided in an interview and/or memorialized in voluntarily produced documents. It is in the Department's interest to protect the confidentiality of sensitive information provided by its sources, and to prevent competitively sensitive information from being shared among competitors. Accordingly, sensitive information will only be used by the Department for a legitimate law enforcement purpose, and it is the Department's policy not to disclose such information unless it is required by law or necessary to further a legitimate law enforcement purpose. In the Department's experience, the need to disclose sensitive material occurs rarely.

Sensitive information includes "confidential business information" which means trade secrets or other commercial or financial information (a) in which the company has a proprietary interest or which the company received from another entity under an obligation to maintain the confidentiality of such information, and (b) which the company has in good faith designated as confidential. The Department's policy with regard to confidential business information is to treat it, for ten years, in the manner set forth in this letter.

In the event of a request by a third party for disclosure of confidential business information under the Freedom of Information Act, the Department will act in accordance with its stated policy (28 C.F.R. § 16.8, a copy of which is enclosed) and will assert all exemptions from disclosure to the extent applicable, including the exemptions set forth in 5 U.S.C. §§ 552 (b)(4), Critical Mass Energy Project v. Nuclear Regulatory Commission, 975 F.2d 871 (D.C. Cir. 1992) (holding that voluntarily submitted financial or commercial information not customarily released to the public is exempt from disclosure); 552(b)(7)(A), National Labor Relations Board v. Robbins Tire and Rubber Co., 437 U.S. 214 (1978) (holding that information the release of which could interfere with enforcement proceedings is exempt from disclosure); and, 552(b)(7)(D), United States Dept. of Justice v. Landano, 508 U.S. 165 (1993) (holding that information the release of which could identify a confidential source is exempt from disclosure).

In the event of a request by a third party for disclosure of any appropriately designated confidential business information under any provision of law other than the Freedom of Information Act, it is the Department's policy to assert all applicable exemptions from disclosure permitted by law. In addition, the Department's policy is to use its best efforts to provide the company such notice as is practicable prior to disclosure of any confidential business information to a third party who requests it under any provision of law other than the Freedom of Information Act.

Although it is the Department's policy not unnecessarily to use sensitive information in complaints or court papers accompanying a complaint, which are publicly available documents, the Department cannot provide an absolute assurance that sensitive information will not be included in such documents. If a complaint is filed, it is the Department's policy to notify your client as soon as is reasonably practicable of any decision by the Department to use confidential business information for the purpose of seeking preliminary relief. Our policy is generally to file under seal any confidential business information used for such purpose and advise the court that your client has designated the information as confidential. Moreover it is the Department's policy to make reasonable efforts to limit disclosure of the information to the court and outside counsel for the other parties to the litigation until your client has had a reasonable opportunity to appear before the court and, if your client appears, until the court has ruled on its application. To that end, it is the Department's policy not to oppose a court appearance by your client for the purpose of seeking protection for the confidential business information used, or to be used, during the preliminary relief proceedings.

If confidential business information becomes the subject of discovery in any litigation to which the Department is a party, it is the Department's policy to use its best efforts to assure that a protective order applicable to the information is entered in the litigation. In addition, our policy is to not voluntarily produce the confidential business information until your client has had a reasonable opportunity to review and comment on the protective order and to apply to the court for further protection. It is the Department's policy not to oppose a court appearance by your client for this purpose.

Please do not hesitate to call me at (zzz) xxx-yyyy if you have any questions.

Sincerely yours,

Pat Attorney